

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.L., by and through his parents and
guardians, J.L. and L.L.,

Plaintiff,

v.

PREMERA BLUE CROSS; AMAZON
CORPORATE LLC GROUP HEALTH AND
WELFARE PLAN; and AMAZON
CORPORATE LLC,

Defendants.

NO. 2:18-cv-1308

COMPLAINT (ERISA)

[REDACTED]

I. PARTIES

1. **S.L.** Plaintiff S.L. is a dependent of an employee of Amazon.com, Inc. and a participant in the Amazon Corporate LLC Group Health and Welfare Plan (the “Plan”). He is a resident of King County, Washington. S.L. is diagnosed with both a mental illness and substance use disorder. In 2016, when he was a minor, S.L. sought and received treatment for these severe illnesses at Catalyst Residential Treatment (“Catalyst”), a licensed residential treatment center (“RTC”) located in Utah. Although Defendants cover medically necessary RTC services to treat mental and substance use

1 illnesses, Defendants denied all coverage provided by Catalyst to S.L. and denied all of
2 S.L.'s appeals of the denials of coverage in violation of the terms of the Plan.

3 2. **Premera Blue Cross.** The Plan's health benefits are claims administered
4 by Defendant Premera Blue Cross ("Premera"). Premera answers benefit questions,
5 makes benefit decisions, pays claims, and processes appeals under the Plan and, in that
6 capacity, is a fiduciary under ERISA. Premera is located in King County, Washington.

7 3. **Amazon Corporate LLC Group Health and Welfare Plan.** Defendant
8 Amazon Corporate LLC Group Health and Welfare Plan is an employee welfare
9 benefit plan under the Employment Retirement Security of Act of 1974 ("ERISA"). The
10 Plan includes a component plan identified as the Amazon and Subsidiaries Standard
11 Plan, which provides health benefits for S.L.

12 4. **Amazon Corporate LLC.** Amazon Corporate LLC is the "Plan Sponsor"
13 and "Plan Administrator" and is a fiduciary under ERISA. It is also located in King
14 County, Washington.

15 II. JURISDICTION AND VENUE

16 5. Jurisdiction of this Court arises pursuant to ERISA, 29 U.S.C. § 1001, *et*
17 *seq.*, 29 U.S.C. § 1132(a)(1)(B), (3) and (e)(1).

18 6. Venue is proper under 29 U.S.C. § 1132(e)(2) because, *inter alia*, a
19 defendant resides or may be found in this district.

20 7. In conformity with 29 U.S.C. §1132(h), Plaintiff has served this Complaint
21 by Certified Mail on the Secretary of Labor and the Secretary of Treasury.

22 III. NATURE OF THE CASE

23 8. This is an ERISA case concerning the denial of medically necessary
24 residential mental health benefits to Plaintiff S.L. by Defendants Premera Blue Cross,
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1 Amazon Corporate LLC Group Health and Welfare Plan and Amazon Corporate LLC
2 (hereinafter collectively referred to as “Amazon”).

3 9. Amazon denied all coverage of S.L.’s medically necessary mental health
4 treatment at Catalyst, without a full and fair review of all medical records, and without
5 properly applying the terms of the Plan or even the InterQual Criteria, the internal
6 clinical guidelines relied upon by Amazon’s claims administrator, Premera.

7 10. Instead, Premera, on behalf of Amazon, denied coverage without:
8 (1) obtaining appropriate medical records for the relevant look-back period under its
9 own clinical coverage criteria; (2) communicating with S.L., his parents and Catalyst
10 providers about the precise information needed for an appropriate review; and
11 (3) applying the precise Plan language. Instead, at the final level of review, Premera’s
12 panelists were swayed by one non-medical panelist’s conviction that residential mental
13 health treatment is *never* medically necessary, derogatorily referring to such treatment
14 as “boarding school with some therapy sprinkled on top.”

15 11. Amazon’s denial is a flagrant error and a breach of its obligation under
16 ERISA to provide S.L. with a “full and fair review” of his claim. Remand in this
17 situation, however, is not appropriate. Consistent with *Abatie v. Alta Health & Life Ins.*
18 *Co.*, 458 F.3d 955, 973 (9th Cir. 2006), S.L. must be permitted the opportunity to submit
19 additional evidence regarding his symptoms and need for treatment in the weeks
20 leading up to May 17, 2016 and thereafter. The Court should then decide whether
21 S.L.’s treatment at Catalyst met the standards for coverage as defined by the terms of
22 the Plan.

23 12. Under either a *de novo* or abuse of discretion review, Defendants’ denial
24 of coverage of S.L.’s medically necessary mental health treatment at Catalyst was error.
25 The Court should order all coverage of the previously uncovered treatment, consistent
26 with the terms and conditions of the Plan.

IV. FACTS

13. S.L. receives his health coverage through his father, who is employed by Amazon. As a result, S.L. is an ERISA beneficiary under the Plan. As a beneficiary, he is entitled to the health benefits set forth in the Plan.

14. The Plan provides coverage for S.L.'s medically necessary mental health services, including residential treatment. *See Appendix A*, 2015 Amazon Standard Plan, p. 17. Medically necessary mental health treatment is treatment intended "to manage or lessen the effects of a psychiatric condition." *Id.*

15. Covered services must also be "consistent with published practices that are based on evidence when available or follow clinical guidelines or a consensus of expert opinion published by national mental health professional organizations or other reputable sources. If no such published practices apply, services must be consistent with community standards of practice." *Id.*

16. Covered services must also be delivered by a provider licensed or certified by the state in which the care is provided, and who is providing care within the scope of his or her license. *Id.*

17. Under the Plan, services at an RTC will only be covered when the services cannot be provided in a less intensive setting.

18. As described below, S.L.'s mental health treatment at Catalyst met all of these requirements. S.L. needed the treatment at Catalyst to manage or lessen the effects of his psychiatric condition, and it was part of a continuum of care, provided at a time when all of the treating providers who evaluated S.L. concluded that the services he needed could not be provided in a less restrictive setting.

19. S.L. has been diagnosed with multiple psychiatric conditions including Generalized Anxiety Disorder, Oppositional Defiant Disorder, Attention Deficit Disorder as well as substance use disorders.

1 20. On January 9, 2016, S.L. was treated at Northwest Behavioral Healthcare
2 Services ("NBHS") due to suicidal ideation, self-harm, anxiety, ADHD and escalating
3 substance abuse. At NBHS he was considered to pose an extremely high risk for
4 relapse, running away and self-harm.

5 21. Amazon covered the treatment at NBHS as medically necessary.

6 22. On February 18, 2016, at the recommendation of the treating providers at
7 NBHS, S.L. was transferred to Evoke Therapy Programs ("Evoke"), where he remained
8 until May 16, 2016. Amazon also covered the treatment at Evoke as medically
9 necessary.

10 23. When S.L. was discharged from Evoke, his treatment team recommended
11 that he receive continued treatment to manage or lessen his mental health condition at
12 a licensed RTC. The treatment team did not believe that S.L. was ready to return to an
13 outpatient environment. The Evoke providers concluded that a return home at that
14 time "would almost certainly result in significant regression and a return to his
15 previous level of functioning."

16 24. S.L.'s parents followed the recommendations of the Evoke treatment
17 providers and enrolled S.L. at Catalyst, which was less restrictive than Evoke, and part
18 of a continuum of care designed to lead to S.L.'s successful return home. S.L. began
19 treatment at Catalyst on May 17, 2016.

20 25. Consistent with the Plan's recommendation, Catalyst submitted a pre-
21 authorization request for coverage to Premera in advance of S.L.'s admission, along
22 with extensive medical information.

23 26. On May 16, 2016, Premera denied the request, claiming that the
24 information provided by Catalyst was "from 3 months ago and farther back."
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26

1 27. Premera's internal notes reflect that a Premera representative called
2 Catalyst but gave Catalyst only 1½ hours to attempt to get more recent records from
3 Evoke.

4 28. Premera did not contact Evoke directly (even though Premera had
5 authorized the treatment and Amazon had paid for it) nor did Premera contact S.L.'s
6 parents for assistance in obtaining Evoke's records.

7 29. Only after S.L.'s parents complained did a Premera medical director call
8 Catalyst. However, the Premera medical director did not inquire about S.L.'s need for
9 treatment, did not request additional documentation, and did not even inform Catalyst
10 that Evoke's records should be submitted. The Premera medical director merely
11 confirmed that the initial denial would stand.

12 30. No other attempt to communicate with S.L.'s treating providers about his
13 treatment at Evoke or Catalyst is found in Premera's documentation of S.L.'s claim.

14 31. S.L.'s parents were not informed that Premera required copies of Evoke's
15 treatment records to determine whether the treatment at Catalyst was medically
16 necessary.

17 32. S.L.'s parents appealed the denial of coverage by Premera, providing a
18 lengthy history of his need for treatment, as well as several letters of medical necessity,
19 including one from his treatment team at Evoke.

20 33. Premera sent the appeal to a contract medical reviewer. The medical
21 reviewer concluded that S.L. did not meet the criteria for continued residential
22 treatment on May 17, 2016, the day that S.L. was transferred from Evoke to Catalyst.
23 The contract reviewer claimed to rely upon the InterQual Criteria, but not upon any
24 specific terms and conditions contained in the Plan.

25 34. Although the contract medical reviewer claimed to be applying the
26 InterQual Criteria as of May 17, 2016, he ignored the "look-back" time period in the

1 InterQual Criteria, which require consideration of symptoms looking back over the
2 prior 72 hours to 2 weeks, including while S.L. was treated at Evoke.

3 35. The contract medical reviewer also ignored evidence of how S.L.'s
4 symptoms met the InterQual Criteria once he was a patient at Catalyst.

5 36. On September 26, 2016, Premera denied S.L.'s Level I appeal of the denial
6 of coverage for Catalyst. Premera maintained that "[S.L.'s] presentation was such that
7 there was no longer any need for the use of residential treatment. He no longer has
8 symptoms that required treatment in a residential facility," although Premera
9 conceded that "[S.L.] would have benefited from continued treatment." Premera did
10 not identify where such "continued treatment" could be obtained, other than at
11 Catalyst. Premera claimed that the denial was generally "based on the plan language
12 and InterQual Criteria," however it failed to identify any plan language as the basis for
13 the denial.

14 37. On November 16, 2016, S.L.'s parents appealed Premera's denial again.
15 In the appeal, S.L.'s father objected to Premera's evaluation of whether residential
16 treatment was needed based upon a single day, May 17, 2016, when S.L. was
17 transferred from one residential facility to another.

18 38. S.L.'s father also noted the speed at which the contracted medical
19 reviewer had made his decision, reviewing voluminous medical records, making a
20 determination, writing a six-page report, and delivering it to Premera, all in a single
21 day. S.L.'s father argued that to do so on such an expedited basis was an abuse of
22 discretion.

23 39. On December 20, 2016, Premera denied S.L.'s request for coverage again.

24 40. For the Level II review, Premera convened a three-person panel
25 consisting of a Premera medical director certified in family medicine, a customer
26 services manager and an operations manager.

1 41. No one on the three-person appeals panel had expertise in mental health
2 treatment.

3 42. Only one member of the panel, Shawn West, M.D., a family physician,
4 had any medical background. Initially, he explained to the other panelists that he
5 couldn't reach a "comfortable conclusion."

6 43. One of the non-medical panel members, Steve Woods, expressed that *he*
7 *does not consider RTCs to ever be medically necessary*. He made this assertion after he
8 reviewed portions of Catalyst's website, which was not part of the administrative
9 record:

10 There's no doubt in my mind that this member has some
11 mental health & possibly chemical dependency issues that he
12 needs help with. The problem I have with RTC's (*and why I*
13 *don't think they're medically necessary*) is that a majority of
14 their curriculum is spent doing things which on the surface
 don't appear to be dealing with those issues. It's basically a
 boarding school with some therapy sprinkled on top.

15 44. There is no record that Mr. Woods contacted anyone at Catalyst to
16 confirm or refute the conclusions that he drew from his review of the Catalyst website.

17 45. After Mr. Woods expressed his opinion, the other two panelists agreed.

18 46. Only Dr. West, the medical reviewer, linked his decision to deny
19 coverage to the InterQual Criteria, but he also limited his opinion to S.L.'s symptoms
20 "at admission." No medical reviewer referenced any part of S.L.'s Plan as the basis for
21 their denial.

22 47. On December 20, 2016, Premera issued the Level II denial letter. The
23 Level II denial letter asserted that S.L.'s symptoms did not meet the InterQual Criteria
24 for medical necessity "at admission."

25 48. It did not inform S.L. or his parents that at least one of Premera's Level II
26 appeals panelists determined that RTCs are *never* medically necessary.

49. The denial letter did not describe how S.L.'s symptoms did not demonstrate "severe functional impairment" under the InterQual Criteria, nor why the isolated date of May 17, 2016, was selected for review.

50. The denial letter failed to identify, as the basis for the denial, any terms or conditions in the Plan that were not met.

51. All conditions precedent to the filing of this action have been performed or have occurred. S.L. has exhausted his administrative remedies, and the filing of this action is timely.

V. CLAIMS

FIRST CLAIM – CLAIM FOR BENEFITS, ENFORCEMENT OF RIGHTS AND CLARIFICATION OF FUTURE BENEFITS RIGHTS UNDER ERISA § 502(A)(1)(B), 29 U.S.C. § 1132(A)(1)(B)

52. Plaintiff re-alleges all paragraphs above.

53. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), S.L. is entitled to (1) enforce his rights under the terms of the Plan, and (2) clarify his right to future benefits under the terms of the Plan.

54. Specifically, and consistent with the terms and conditions of the Plan, S.L. seeks coverage of all mental health treatment at Catalyst, a licensed residential treatment center that provided medically necessary treatment to S.L.

SECOND CLAIM – CLAIM TO ENFORCE TERMS OF THE PLAN UNDER ERISA § 502(A)(3), 29 U.S.C. § 1132(A)(3)

55. Plaintiff re-alleges all paragraphs above.

56. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), provides that a participant or beneficiary may "enjoin any act or practice which violates any provision of this subchapter or the terms of the plan." S.L. seeks to enjoin Amazon from continuing to deny his medically necessary residential mental health treatment based upon its view

1 of his condition on a single day, May 17, 2016, when he was transferred from one
2 residential mental health facility to another.

3 57. ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3), further provides that a
4 participant or beneficiary may obtain other appropriate equitable relief to redress
5 violations of ERISA or enforce plan terms. To the extent full relief is not available
6 under ERISA § 503(a)(1)(b), 29 U.S.C. § 1132(a)(1)(B), or ERISA § 503(a)(2), 29 U.S.C.
7 § 1132(a)(2), then S.L. seeks all equitable remedies including, without limitation,
8 injunction.

9 **THIRD CLAIM – CLAIM FOR ATTORNEY FEES AND COSTS**
10 **UNDER ERISA § 502(G)(1), 29 U.S.C. § 1132(G)(1)**

11 58. Plaintiff re-alleges all paragraphs above.

12 59. S.L. is entitled to his attorney fees and costs under ERISA § 302(g)(1),
13 29 U.S.C. § 1132(g)(1).

14 **VI. DEMAND FOR RELIEF**

15 WHEREFORE, S.L. requests that this Court:

16 1. Enter judgment in favor of S.L. establishing his right to receive coverage
17 of his medically necessary residential mental health treatment at Catalyst under the
18 terms of the Plan;

19 2. Enter judgment in favor of S.L. for damages, in an amount to be proven at
20 trial, due to the failure to provide benefits due under the Plan;

21 3. Award S.L. his attorney fees and costs; and

22 4. Award such other relief as is just and proper.

1 DATED: September 4, 2018.

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3 SPOONEMORE HAMBURGER

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